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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

EPIC GAMES, INC.,

**Plaintiff, Counter-defendant,  
v.**

APPLE INC.,

## Defendant, Counterclaimant,

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF M. BRENT  
BYARS IN SUPPORT OF EPIC  
GAMES, INC.'S  
ADMINISTRATIVE MOTION TO  
SEAL PORTIONS OF PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Judge: Hon. Yvonne Gonzalez Rogers

DECLARATION OF M. BRENT BYARS IN SUPPORT OF EPIC'S ADMINISTRATIVE  
MOTION TO SEAL PORTIONS OF ITS PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
4:20-cv-05640-YGR-TSH

1 I, M. Brent Byars, declare as follows:

2       1. I am a Senior Attorney at Cravath, Swaine & Moore LLP, counsel to Epic  
 3 Games, Inc. ("Epic") in the above-captioned actions. I am admitted to appear before this Court  
 4 *pro hac vice.*

5       2. I submit this declaration pursuant to Civil Local Rule 79-5. The contents of this  
 6 declaration are based on my personal knowledge.

7       3. Epic's Proposed Findings of Fact and Conclusions of Law quote or reproduce  
 8 discovery materials that Apple or third parties have designated as CONFIDENTIAL or  
 9 HIGHLY CONFIDENTIAL pursuant to the Protective Order entered in this Court. Epic is  
 10 serving its Motion and Declaration on the affected third parties pursuant to Civil Local Rule  
 11 79-5(e). The following Table shows each affected third party and the corresponding numbered  
 12 Finding of Fact or Conclusion of Law that may contain information provided by each party.

Finding of Fact Paragraph Number	Affected Party
7	Apple
10	Apple
15	Apple
30	Apple, Spotify
35	Apple
39	Apple
40	Apple
42	Apple
46	Apple
47	Apple
57	Apple
59	Apple

1	63.k	Apple
2	70.b	Match Group
3	78	Match Group
4	81	Apple, Match Group
5	85.a	Apple
6	102	Apple
7	114	Apple
8	121	Apple, Amazon
9	123	Apple
10	124	Apple
11	142	Apple
12	147	Match Group
13	157	Match Group
14	160	Apple
15	161	Apple
16	166	Apple
17	174	Apple
18	176	Apple
19	192	Apple
20	195	NVIDIA
21	196	Match Group
22	206	NVIDIA, Microsoft, Google
23	207	NVIDIA
24	210	Apple

1	231	Apple
2	232	Apple
3	233	Apple
4	234	Apple
5	235	Apple
6	236	Apple
7	237	Apple
8	239	Apple
9	244	Apple
10	245	Match Group
11	248(c)	Apple
12	250	Microsoft, Facebook, Nvidia, Google
13	259(c)	Amazon
14	261(f)	Match Group
15	262(a); (b); (d)	Match Group
16	265(d)	Apple
17	274	Apple
18	284	Match Group
19	285; 285(d)	Match Group
20	285(g)	Apple
21	287(c)	Uber, Apple
22	289(c)	Match Group
23	297(a)	Apple
24	303	Apple

1	305(b); 305(c)	Apple, Netflix
2	309	Apple
3	313	Apple, Uber
4	328	Match Group
5	329	Match Group
6	332(b)	Apple, GoshenWells
7	472(a)	Apple
8	484(b)	Apple
9	493(b)	Apple
10	495(a)	Apple
11	495(b)	Apple
12	503	Apple
13	505(b)	Apple
14	505(c)	Apple
15	505(d)	Apple
16	510	Apple
17	512	Apple
18	512(a)	Apple
19	513	Apple
20	515	Apple
21	516	Apple
22	517	Apple
23	520(a)	Apple
24	520(b)	Apple
25		
26		
27		

1	521(d)	Apple
2	522	Apple
3	525(c)	Apple
4	526	Apple, SourceDNA
5	527	Apple
6	530(f)	Apple
7	530(i)	Apple
8	536(a)	Apple
9	536(b)	Apple
10	537	Apple
11	537(e)	Match
12	537(f)	Match
13	537(g)	Match
14	540(c)	Apple
15	542(a)	Apple
16	544(a)	Apple
17	547	Apple
18	549	Apple
19	550(e)	Apple
20	550(g)	Apple
21	550(i)	Apple
22	550(j)	Apple
23	551(a)	Apple
24	551(b)	Apple
25		
26		
27		

1	551(c)	Apple
2	552	Apple
3	552(a)	Apple
4	552(b)	Apple
5	552(c)	Apple
6	552(d)	Apple
7	552(e)	Apple
8	552(f)	Apple
9	553	Apple
10	560(b)	Apple, Roblox
11	560(f)	Apple, Roblox
12	564(a)	Apple, Amazon
13	564(b)	Apple, Amazon
14	564(c)	Apple, Amazon
15	571	Apple, Amazon, Uber

Conclusion of Law Paragraph Number	Affected Party
18	Apple
19	Apple
20	Match Group
21	Apple, App Annie
22	Apple
23	Apple
24	Apple
25	
26	
27	

1	73	Apple
2	91	Apple
3	101	Apple
4	102	Apple
5	104	Apple
6	107	Apple
7	108	Apple
8	149	Apple
9	259	Apple, App Annie
10	274	Apple, Microsoft
11	295	Apple
12	302	Apple
13	310	Apple
14	311	Apple
15	358	Apple
16	365	Match Group
17	381	Apple

20  
21       4. I have met and conferred with counsel for Apple Inc., including by telephone, in  
22 an effort to narrow the documents and testimony that the parties propose to maintain under seal.  
23 This process has resulted in narrowing the amount of designated confidential material and  
24 consequently reduced the need for provisional sealing (pursuant to Local Rule 79-5(e)) of  
25 material designated by the other party as confidential. The redacted versions of the Proposed  
26 Findings of Fact and Conclusions of Law reflect the results of that negotiation.

5. However, the parties have not had an opportunity to inspect the opposing party's Proposed Findings of Fact and Conclusions of Law. In addition, the parties have requested the provisional sealing of certain information in which third parties may have confidentiality interests (whether the party's information was produced by such third party or by one of the parties). It is thus not feasible at this time for the parties to execute a stipulation of sealing.

6. The parties therefore have agreed, after filing, to promptly review any redacted portions of the opposing party's Proposed Findings of Fact and Conclusions of Law. The parties will promptly withdraw any request for provisional sealing to the extent possible based on their review of the other party's filing and will meet and confer in good faith to resolve any objections to any remaining requests to seal. If a party opposes the redactions proposed by another party, it will file such opposition by April 12, 2021, on the same day each must file a declaration in support of any request to seal. The parties will also cooperate to provide prompt notice to any third parties who may have confidentiality interests in information provisionally sealed in the Proposed Findings of Fact and Conclusions of Law so that those third parties may determine whether to request sealing of such information by the Court.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on April 7, 2021 in New York, New York.

/s/ M. Brent Byars  
M. Brent Byars